Supreme Court, U.S.
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No. 00-1432

In the
Supreme Court of the United States

Metro Communications Company,
Petitioner,

v.

Ameritech Corporation,
Ameritech Mobile Communications, Inc.,
and Detroit SMSA Limited Partnership,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether there is a conflict among the United States courts of appeal regarding the finality of a judgment that grants a plaintiff all of the requested relief when the judgment addresses some, but not all, of the plaintiff's alternative theories for relief, and when a subsequent order voluntarily dismisses without prejudice the remaining mooted legal theories.

2. Whether Fed. R. Civ. P. 13(a) requires that a sales agent's claim for commissions is a mandatory counterclaim to the principal's claim for a breach of the agency contract, especially when the sales agent's performance is an issue with respect to both claims.

3. Whether the doctrine of judicial estoppel requires further development by this Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6) of the Rules of the Supreme Court of the United States, Respondents rely upon the Corporate Disclosure Statement filed in their Brief on Appeal in this case in the United States Court of Appeals for the Sixth Circuit.

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STATEMENT OF THE CASE

Petitioners' statement of procedural history in their petition mischaracterizes the nature of the claims in this case and in the prior federal court case and obscures the actual relationship between these cases. A proper understanding of this case and of the nature of Petitioner's arguments depends upon a correct statement of the factual and procedural background.

Respondent Ameritech Mobile Communications, Inc. (AMCI) is a wholly-owned subsidiary of Respondent Ameritech Corporation, and AMCI sells and markets cellular radio service (CRS), which is commonly known as mobile phone service. The FCC has licensed Respondent Detroit SMSA to provide CRS in southeastern Michigan, and AMCI acts as the managing partner of Detroit SMSA.

AMCI entered into an agency agreement with Petitioner under which Petitioner sold CRS on behalf of AMCI and Detroit SMSA. That agreement expired on December 31, 1993. Six months later, on June 24, 1994, Ameritech and AMCI sued Petitioner and Peter Siavrakas, Petitioner's sole shareholder and president, in the United States District Court for the Eastern District of Michigan. The case was assigned to the Honorable George E. Woods. Among other things, Ameritech and AMCI alleged that the defendants had breached the agency agreement by continuing to sell AMCI's cellular service and to use Ameritech's and AMCI's trademarks after the expiration of the agency agreement. The complaint also challenged the use of the trademarks under the Lanham Act. Although Ameritech and AMCI asserted two causes of action, each sought the same kind of relief, which was money damages along with an injunction against the use of their trademarks. In August

1994, Petitioner and Mr. Siavrakas filed their answer but did not include a counterclaim of any kind.

In 1995, Ameritech and AMCI moved for summary judgment on their breach-of-contract cause of action. Judge Woods ruled that Petitioner and Mr. Siavrakas had breached the agency agreement and, as an initial matter, granted the requested injunction that prevented Petitioner from selling Ameritech mobile phone service. Later, Judge Woods entered an order fixing the damages to which Ameritech and AMCI were entitled. Finally, in September 1997, he awarded attorneys' fees to Ameritech and AMCI. Thus, by the end of the case, he had given Ameritech and AMCI all of the relief that they had requested, but he had only ruled on their allegations of breach of contract. The Lanham Act claims had not yet been addressed, and these mooted causes of action were voluntarily dismissed without prejudice under Fed. R. Civ. P. 41(a). Petitioner and Mr. Siavrakas appealed the judgment of the district court and the United States Court of Appeals for the Sixth Circuit affirmed. They also came to this Court, asking for a writ of certiorari, and, in a supplemental brief to that petition, they raised essentially the same argument that they advance in this case regarding the finality of orders under Rule 41(a).

In June 1998, Petitioner initiated this case as an adversary action in bankruptcy court, alleging that Ameritech and AMCI had breached the agency agreement by failing to pay commissions, some of which were supposedly earned after the expiration of the agency agreement. This was not, however, the first time that Petitioner had sought to recover these commissions from Ameritech and AMCI. In 1994, AMCI and Detroit SMSA had brought a suit against Petitioner in Michigan state court, seeking the return of some customer information that Petitioner wrongfully held after the agency

agreement expired. In this state court case, Petitioner moved for leave to file a counterclaim for its commissions, but the state court denied the motion on the ground that the counterclaim should have been asserted in the first federal action then pending in the Eastern District. Ameritech's counsel even stipulated that Petitioner could file its commissions counterclaim in the first federal action, but Petitioner declined this offer.

The bankruptcy case was removed to the Eastern District of Michigan, and Respondents moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), contending that Petitioner's claim for commissions was a compulsory counterclaim in the first federal action. The Honorable Nancy Edmunds granted this motion, agreeing that under Fed. R. Civ. P. 13, Petitioner's claim for commissions was a compulsory counterclaim in the first federal action and, under the doctrine of res judicata, was therefore barred. She specifically held that the claim for commissions was logically related to Ameritech's and AMCI's claim for breach of the agency agreement and that the issue of Petitioner's performance of the agreement was an essential aspect of both claims.

Petitioner appealed Judge Edmund's ruling to the Sixth Circuit, which summarily affirmed her opinion, adopting her reasoning as correct and sufficient. Petitioners have sought a writ of certiorari in this Court, asking for a review of the Sixth Circuit's decision.

ARGUMENT

I. THE CIRCUIT COURTS UNIFORMLY AGREE THAT A JUDGMENT IS ALWAYS FINAL FOR THE PURPOSES OF RES JUDICATA WHEN IT GRANTS A PLAINTIFF ALL OF THE RELIEF IT REQUESTED, EVEN WHEN THE JUDGMENT IS FOLLOWED BY A VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF MOOTED CLAIMS.

Petitioners contend that the Courts of Appeal disagree on the question whether a judgment order is final for purposes of the doctrine of res judicata when it addresses some but not all of the plaintiff's legal theories and when it is followed by a voluntary dismissal without prejudice of the remaining theories. Even if this is a live question among the federal appellate courts (and this proposition is debatable), that question is not presented here. In the cases that Petitioner cites to create the appearance of a circuit split, the partial judgment orders were in favor of defendants and plaintiffs voluntarily dismissed their remaining causes of action in an effort to create finality and manufacture appellate jurisdiction. In contrast, in this case, Respondents — plaintiffs below — prevailed on a motion for partial summary judgment, which granted them all of the relief that they could receive, and then voluntarily dismissed their redundant, mooted legal theories without prejudice. There is no controversy among the federal courts on the question whether an appeal may be taken from a judgment that resolves all of the issues in the case and concludes all of the parties' rights and liabilities. Such a judgment is the epitome of a "final order," as defined for the purposes of 28 U.S.C. § 1291, and certainly meets the requirements of finality for res judicata. If there is a question about how far ***losing*** plaintiffs may go in attempting to

manufacture finality for an order granting partial summary judgment for defendants, such a question is simply not presented by this case.[1]

The fundamental principle relevant to this case pertains to the definition of "finality" for purposes of res judicata. Under the doctrine of res judicata, the issuance of a final judgment in one case prevents the parties to that case or their privies from relitigating the causes of action or constituent issues that were resolved by the judgment. *Federated Dep't Stores, Inc. v. Moite*, 452 U.S. 394, 398 (1981). It is well-settled that a final order in the district court is one that disposes of all of the rights and liabilities of the parties and leaves the district court with nothing left to do but execute the judgment. *See Brown Shoe Co. v. United States*, 370 U.S. 294, 306-08 (1962) (concluding that a judgment was final because "[e]very prayer for relief was passed upon"). Consequently, an order is "final" if it completely disposes of the plaintiff's claim by awarding a plaintiff all of the relief requested. *See id.* An order may award a plaintiff all of its

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[1] Indeed, there is a question whether any concepts of "finality" are relevant here at all. Although the district court invoked the doctrine of res judicata as a basis for its dismissal of Petitioner's claim for commissions, it is not clear that the doctrine of res judicata was necessary for a ruling that a claim is barred when it was a mandatory counterclaim in a prior action but was not asserted. Instead of res judicata, the doctrine of waiver and estoppel may be the proper basis for finding that the claim is barred. *See Kane v. Magna Mixer Co.*, 71 F.3d 555 (6th Cir. 1995), *cert denied*, 517 U.S. 1220 (1996). For the purposes of this brief, Respondents assume for the sake of argument — but do not concede — that res judicata is the proper basis for the district court's conclusion that Petitioners' claim for commissions was barred.

requested relief without addressing each and every count of the complaint. As the Seventh Circuit noted, "[d]ifferent theories of relief — that is, different legal characterizations of the same facts — are not separate claims." *Production & Maintenance Employees' Local 504 v. Roadmaster Corp.*, 954 F.2d 1397, 1402 (7th Cir. 1992). A plaintiff makes a single claim when it presents one request for relief on the basis of one set of facts, even if the plaintiff characterizes those facts in terms of different legal theories and describes those theories in separate counts. *See id.* Therefore, when a court awards all of the requested relief, it resolves the claim and concludes the action, even if it does not rule on all of the legal theories and allows the voluntary dismissal without prejudice of some of the counts reflecting those theories.[2]

For example, in *Local 504, supra*, plaintiffs alleged that the trustees of their pension plan had improperly amended it. They characterized this action as a violation of certain sections of the Employee Retirement Income Security Act ("ERISA") and, alternatively, as a common law breach of fiduciary duty, but they asked for a single form of relief. The district court granted summary judgment on the ERISA causes of action and, in a separate, later order, granted the plaintiffs' voluntarily dismissal without prejudice of the fiduciary duty cause of action. The Seventh Circuit held that:

> A dismissal without prejudice is generally not final and appealable. . . . In this case,

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[2] Plaintiffs will usually have good reasons for not permanently renouncing their mooted causes of action in a dismissal with prejudice. In the event that an appellate court will reverse a partial summary judgment and remand the case for trial or, at least, further proceedings, the plaintiff may wish to reassert the theories on which the trial court did not rule.

> however, the district court's summary judgment on the § 204(g) and (h) [of ERISA] counts granted the plaintiffs all of the relief they had requested and were entitled to. As plaintiffs noted in the memorandum they filed in the district court supporting their motion to dismiss, trial on the two remaining claims would have been unnecessary. By dismissing the final two counts, the district court ended the litigation in that court.

Local 504, 954 F.2d at 1402 (citations omitted). Consequently, it is well-established and obvious that a district court issues a final order when it grants summary judgment to the plaintiff and awards all of the relief that the plaintiff requested, even if the summary judgment does not dispose of all of the plaintiff's causes of action, and even if the unresolved causes of action are voluntarily dismissed without prejudice.[3] The fact that the redundant, mooted claims were dismissed without prejudice poses no threat of piecemeal litigation. The prevailing plaintiff could not file a new complaint on the basis of those claims because, having been afforded full relief, it could not possibly show injury, which would be a prerequisite for asserting a claim.

The cases that Petitioners discuss in their description of a circuit split are fundamentally different from this case.

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[3] In *Local 504*, the court addressed the definition of "finality" for the purpose of applying 28 U.S.C. § 1291. It is well-established that the definition of finality necessary to invoke appellate jurisdiction is more stringent than the definition required for the application of the doctrine of res judicata. *See Coleman v. C.I.R.*, 16 F.3d 821, 830-31 (7th Cir. 1994). Thus, if an order is "final" for the purposes of § 1291, it is *a fortiori* final for the purpose of res judicata.

Petitioners' cases involve plaintiffs that received **adverse** judgments eliminating some of their causes of action. Those plaintiffs attempted to convert a partial judgment into a final one by employing Rule 41(a)(2) of the Federal Rules of Civil Procedure to voluntarily dismiss their remaining causes of action without prejudice, even though those causes of action presented live issues subject to district court resolution. In this case, the causes of action that were voluntarily dismissed without prejudice were superfluous and moot, and they left nothing for the district court to resolve. Consequently, their dismissal does not reflect an attempt to "manufacture" finality.

Petitioners may be correct in arguing that there is a circuit split on the propriety of asserting appellate jurisdiction of cases in which a plaintiff has attempted to artificially convert an adverse, partial summary judgment into an order that meets the finality requirements of § 1291. *See* 15A Charles A. Wright, *et al.*, Federal Practice & Procedure, § 3914.8 (discussing this kind of "manufactured" finality). As Petitioners suggest, when that type of procedural jockeying occurs (which did not happen here), there is some dispute among the federal appellate courts about the propriety of such a procedure. *See id*; *compare Hicks v. NLO, Inc.*, 825 F.2d 118, 120 (6th Cir. 1987) (a partial summary judgment can be converted into final order when plaintiff voluntarily dismisses remaining claims without prejudice, as long as district court is not deceived about reasons for and nature of dismissal) *and Chrysler Motors Corp. v. Thomas Auto Co., Inc.*, 939 F.2d 538, 540 (8th Cir. 1991) (when district court dismissed some causes of action without prejudice after granting partial summary judgment against counter-plaintiff, "the effect of [the dismissal] was to make the judgment granting partial summary judgment a final judgment for purposes of appeal, even though the district court had not so certified under Fed. R. Civ. P. 54(b)") *with Ryan v. Occidental Petroleum Corp.*,

577 F.2d 298, 302-03 (5th Cir. 1978) (plaintiff could not employ a voluntary dismissal without prejudice to convert adverse partial summary judgment to final order for purposes of § 1291) *and Cook v. Rocky Mountain Bank Note Co.*, 974 F.2d 147, 148 (10th Cir. 1992) ("plaintiff cannot be allowed to undermine the requirements of Rule 54(b) by seeking voluntary dismissal [without prejudice] of her remaining claims and then appealing the claim that was dismissed with prejudice") *and Chappelle v. Beacon Communications Corp.*, 84 F.3d 652, 654 (2d Cir. 1996) (same). These cases are irrelevant, however, to this case, where plaintiffs prevailed and a final judgment was entered.

In declining to allow **losing** plaintiffs to use Rule 41(a)(2) as an instrument for manufacturing a final order, courts have noted that such a procedure creates a risk of piecemeal litigation. *See Chappelle, supra; Cook, supra*. If a plaintiff appeals an adverse judgment on some of the causes of action related to a single case and loses, it may revive the dismissed claims and bring a new suit, which might result in the resubmission of the case to the Court of Appeals. In such a situation, the appellate court might be forced to analyze the legal significance of the same facts in two different cases. *Chappelle*, 84 F.3d at 654. As the Second Circuit put it:

> A plaintiff's attempt to appeal a prior adverse determination following the dismissal of his remaining claims without prejudice necessarily implicates the policies of the final judgment rule. Allowing such an appeal following a voluntary dismissal with prejudice . . . furthers the goal of judicial economy by permitting a plaintiff to forego litigation on the dismissed claims while accepting the risk that if the appeal is unsuccessful, the litigation will end.

> By contrast, because a dismissal without prejudice does not preclude another action on the same claims, a plaintiff who is permitted to appeal following a voluntary dismissal without prejudice will have secured an otherwise unavailable interlocutory appeal.

Id. (citations omitted).

The same risk of piecemeal litigation is simply not present in a case such as this one where the **prevailing** plaintiff voluntarily dismisses redundant legal theories without prejudice after receiving a favorable judgment. Such claims may or may not be reinstated if the district court judgment is reversed or vacated. If they are reinstated, however, they will be part of the same case that was appealed, thus eliminating any threat of piecemeal litigation. If the judgment for the plaintiff is affirmed, the voluntarily dismissed claims will remain moot and cannot be the basis for any new suits.

If there were only one rule for establishing appellate jurisdiction in all cases where a plaintiff voluntarily dismissed causes of action without prejudice, regardless of whether the plaintiff won or lost or whether it received complete relief, improper results would follow. Most importantly, the creation of a single rule would create a substantial opportunity for plaintiffs to manipulate procedure for the purpose of precluding appellate review of judgments favorable to them.

The Eleventh Circuit has recently considered the problem of having one rule for all cases in which a plaintiff voluntarily dismisses causes of action without prejudice, and it has confirmed the importance of having different jurisdictional rules for winning and losing plaintiffs who employ Rule 41(a)(2) before an appeal is taken. In *State*

Treasurer v. Barry, 168 F.3d 8 (11th Cir. 1999), a concurring opinion criticized the opinion in *Ryan* on the ground that *Ryan* could be interpreted to preclude appellate jurisdiction in **every** case where a plaintiff had voluntarily dismissed causes of action without prejudice, regardless of whether such plaintiff won or lost. The *Barry* concurrence was concerned that the application of this rule to prevailing plaintiffs could allow such plaintiffs to effectively oust an appellate court of jurisdiction to overturn the judgment favorable to them. As the concurring judge pointed out, a plaintiff could bring a complaint with two causes of action and one claim for relief, but one of the causes of action could be essentially meritless. Immediately after filing the complaint, and before the defendant could answer, the plaintiff could, of right, voluntarily dismiss the meritless cause of action without prejudice and proceed with the viable cause of action. If it prevailed, the plaintiff could then rely on the theoretical pendency of the dismissed claim to bar the defendant from appealing the judgment. *Barry*, 168 F.3d at 19.

The Eleventh Circuit acted quickly to prevent such an injustice. In *Schoenfeld v. Babbit*, 168 F.3d 1257, 1266 (11th Cir. 1999), decided approximately two weeks after *Barry*, the court held that "we read *Ryan* and its progeny to apply ***only*** when a plaintiff voluntarily dismisses its remaining claims without prejudice after a non-final ***adverse*** district court order has been entered" (emphasis added).

The Eleventh Circuit's discussion in *Schoenfeld* makes clear that the circuit split identified by Petitioners has no relevance to this case. Indeed, if Petitioners' succeeded in their attempt to apply an out-of-context rule to this case, they would create just such an unjust and improper procedural rule. While problems may arise when ***losing*** plaintiffs attempt to manufacture finality for adverse judgments, there is no

corresponding problem when an appellate court takes jurisdiction of a case where a plaintiff obtained all of the relief it sought and voluntarily dismissed redundant claims without prejudice. Indeed, as the *Barry* concurrence noted, a problem would arise in this latter situation only if the defendant were prevented from taking an immediate appeal.

II. THE LOWER COURTS CORRECTLY RULED THAT PETITIONER'S CLAIM FOR COMMISSIONS WAS A MANDATORY COUNTERCLAIM IN THE FIRST FEDERAL ACTION.

Petitioner raises two arguments against the ruling that its claim for commissions was a compulsory counterclaim under Rule 13. First, it contends its claim for commissions did not arise from the same transaction as Respondents' claims in the first federal action and was therefore not "logically related to Respondents' claims." Second, it argues that its claim for commissions had not matured at the time of the first federal action and, therefore, could not have been fairly mandated. Both of these arguments are flatly contradicted by the facts of this case.

Petitioner makes its argument about the relationship between the claims by mischaracterizing the complaint in the first federal action. According to Petitioner, Ameritech and AMCI simply brought trademark claims in the first federal action, which alone would not be closely related to Petitioner's claim for commissions under the agency agreement. Although Ameritech and AMCI did bring a Lanham Act claim in the first federal action, their complaint also alleged that Petitioner and Mr. Siavrakas breached the agency agreement because of their post-expiration conduct. This claim was completely intertwined with Petitioner's claim

for commissions, which also involved Petitioner's post-expiration conduct. In fact, Ameritech and AMCI's contract claim and Petitioner's claim for commissions both relate to Petitioner's performance of the agency agreement, both before and after its expiration. This relationship amply demonstrates that the two claims have more than an adequate "logical relationship" and therefore fall within the ambit of Rule 13. *See Warshawsky & Co. v. Arcata Nat'l Corp.*, 552 F.2d 1257 (7th Cir. 1977) (holding that a claim for breach of contract and a claim for payments from the same contract were logically related).

Petitioner also misstates the procedural history of the case when it asserts that its claim for commissions had not matured at the time it filed its answer in the first federal action. **Petitioner had moved to file a counterclaim for those same commissions in a parallel state court case two months before it filed its answer in the first federal action.** Moreover, when the state court denied the motion to file the counterclaim, Respondents were willing to stipulate that Petitioner could file that claim in the first federal action. Petitioner failed or chose not to do so. Petitioner's claim for commissions was not included in the first federal action because Petitioner chose not to include them, not because they had not matured. There is simply no basis for Petitioners' argument that its mandatory counterclaims were not mature during the pendency of the first federal action.

III. THIS CASE DOES NOT PROVIDE AN OCCASION FOR THE DEVELOPMENT OF THE DOCTRINE OF JUDICIAL ESTOPPEL.

As with its other arguments, Petitioner's argument regarding judicial estoppel is not supported by the law and or the facts of this case. First, Petitioner asserts that this Court

has not adequately developed the doctrine of judicial estoppel or established rules for its application by the federal courts. The doctrine, however, involves well-established principles of equity that have been extensively developed in the common law and that are recognized in the federal courts. The application of these principles is not problematic and it is regularly undertaken in the federal courts, including this Court. *See Pegram v. Herdrich*, 530 U.S. 211, 228 n.8 (2000) (noting that the doctrine prevents parties from relying on one argument to prevail in one phase of a case and then relying on a contrary argument to prevail in a later phase).

Second, Petitioner misstates the nature of Respondents' arguments below in an effort to suggest that the doctrine should apply here. Contrary to Petitioner's assertions, Respondents have not taken contrary positions in different phases of this case with respect to the question whether Petitioner's claim for commissions arises out of the same transaction or occurrence as Respondents' claims for breach of contract and for the violation of its trademark rights. In the first federal action, *Petitioner* contended that the district court should abstain from hearing the complaint because, under Michigan's rules of civil procedure, Ameritech and AMCI should be compelled to join their federal contract and trademark claims with their state-court claim and delivery action that was pending at the same time. In addressing this contention, the district court held that abstention would only be required if all of Respondents' claims were identical. Thus, in the first federal action, Respondents prevailed on the argument that their contract and trademark claims were not identical; they did not argue that the claims did not arise from the same transaction or occurrence. If anything, it is Petitioner who is adopting contrary arguments at different phases of the proceeding, first maintaining that the contract and trademark claims were identical and later insisting that

they did not arise from the same transaction or occurrence. Accordingly, Respondents have not taken any positions during the course of this litigation justifying the imposition of the extraordinary remedy of the application of the doctrine of judicial estoppel.

CONCLUSION

Petitioner has failed to identify a single meritorious reason why this Court should take jurisdiction of this case. Petitioner purports to identify conflicts among courts or gaps in the law, where they simply do not exist. Moreover, even if such legal conflicts or gaps did exist, they are not presented by this case. In the end, the lower courts made the simple and indisputably correct ruling — that Petitioner's claim for commissions from the agency agreement should have been brought in conjunction with Respondents' claim for breach of the same agreement and that, because the claims were not joined, Petitioner lost the right to seek its commissions. There is no reason for this Court to disturb this ruling, and Respondents respectfully request that it deny the Petition.

Respectfully submitted,

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